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Intel Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:
ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**DECLARATION OF FRANK BUSCH IN
SUPPORT OF DEFENDANTS' JOINT
RESPONSE TO PLAINTIFFS'
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL**

Date Consolidated Amended Compl. Filed:
September 13, 2011

Master Docket No. 11-CV-2509-LHK

DECLARATION OF FRANK BUSCH

1 I, Frank Busch, declare:

2 1. I am an attorney duly licensed to practice law in the State of California, and an
3 associate at the firm of Bingham McCutchen LLP, attorneys for Defendant Intel Corporation
4 (“Intel”). I have personal knowledge of the facts set forth herein, except those matters stated on
5 information and belief. On behalf of Intel, I make this declaration pursuant to Civil Local Rule
6 79-5(d) and 7-11(a) to demonstrate that good cause exists for the documents described below to
7 remain under seal. I make this declaration in support of Defendants’ Joint Administrative
8 Motion to Seal filed concurrently with this Declaration. If called and sworn as a witness, I could
9 and would competently testify to the matters stated below.

10 **The Intel Confidential Information That Should Be Sealed**

11 2. I have reviewed the sealed portions of: (1) Plaintiffs’ Reply In Support of
12 Supplemental Motion for Class Certification (“Reply”, Dkt. 455); (2) the Rebuttal Supplemental
13 Expert Report of Edward E. Leamer, Ph.D. (“Leamer”, Dkt. 457); and (3) the Declaration of
14 Anne B. Shaver in Support of Plaintiffs’ Supplemental Motion for Class Certification (“Shaver”,
15 Dkt. 456) filed by plaintiffs on July 12, 2013. As described below, they quote from and
16 reference Intel’s documents and data that are designated “CONFIDENTIAL – ATTORNEYS’
17 EYES ONLY” (“AEO”) pursuant to the Protective Order in this Action (Dkt. 107).

18 3. The types of information reflected in the documents at issue here are similar to the
19 types described in the Declaration of Tina M. Evangelista in Support of Plaintiffs’
20 Administrative Motion to File under Seal Plaintiffs’ Notice of Motion and Motion for Class
21 Certification, and Memorandum of Law in Support, filed on October 9, 2012 (Dkt. 203)
22 (“Evangelista Declaration”).

23 **The Reasons For Sealing The Redacted Information And Underlying Documents**

24 4. According to the Evangelista Declaration, because the types of information
25 contained in redacted portions of the above-referenced filings are similar to the types of
26 information described therein, the following reasons support the motion to seal.

27 5. The Intel documents and data quoted or described in the above-referenced filings
28 contain information regarding confidential business practices that gives Intel a competitive

1 advantage in recruiting, retaining and compensating its employees

2 6. Intel derives independent economic value from the strategic information and data
3 contained in these types of documents not being generally known to the public or to other
4 persons, including Intel's many labor market competitors, who can obtain economic value from
5 its disclosure or use.

6 7. It is Intel's practice to treat these types of documents and data as confidential, and
7 not to disclose them outside the company. I am informed and believe that Intel has taken
8 reasonable steps to ensure that these documents remain confidential, including designating them
9 AEO pursuant to the Protective Order filed in this Action.

10 8. Specifically, Intel seeks to seal the following Intel confidential, commercially
11 sensitive information in the above-referenced filings:

- 12 • **Reply at 12:15-19 and 13:12-15** reflects Intel's compensation strategies. In
13 particular, it shows how Intel uses its annual review process to fairly compensate its
14 employees.
- 15 • **Leamer at Paragraph 23** reflects Intel's compensation strategies. In particular, it
16 describes Intel's strategies for responding to market pressure on specific job
17 categories.
- 18 • **Leamer at Figure 9** reflects Intel's compensation strategies. In particular, it shows
19 how often Intel employees receive base compensation within the salary range set for
20 their grade.
- 21 • **Shaver at Exhibit F pages 45:22, 46:2-3, and 98:5-10** contains confidential
22 employee information. In particular, it names individual Intel employees who have
23 not sought to make their identities known or placed in the public record.
- 24 • **Shaver at Exhibit F pages 46:23-25, 75:2-8, and 76:17-25** contains confidential
25 employee information. In particular, it describes the deponent's individual
26 performance ratings and grade levels.
- 27 • **Shaver at Exhibit F pages 47:4-8, 74:5-75:1, 75:14-20, 99:1-102:25** reflects Intel's
28 compensation strategies. In particular, it provides proprietary details about Intel

1 policies and pilot programs created to ensure that Intel properly compensates its
2 employees.

- 3 • **Shaver at Exhibit H pages 181:19-182:15 and 183:5-25** reflects Intel's
4 compensation strategies. In particular, these passages describe Intel's use of unique
5 compensation system features to ensure that Intel employees are properly
6 compensated.

- 7 • **Shaver at Exhibit O pages 96:4-98:19** reflects Intel's employment strategies. In
8 particular, these passages identify information related to specific Intel job titles and
9 the number of managers Intel assigns to all employees within those titles.

10 **The Particularized Harm Disclosure Would Cause**

11 9. According to the Evangelista Declaration, because the types of information
12 redacted from the above-referenced documents are similar to the types of information described
13 therein, Intel would suffer the following particularized harm if the redacted information is
14 disclosed to the public. The public disclosure of the Intel confidential information contained in
15 Intel's documents and data described above would put Intel at a significant competitive
16 disadvantage in terms of its ability to identify, recruit, and compensate its employees. Public
17 disclosure of Intel's detailed internal analysis of its recruiting, compensation, and related
18 strategies, policies and practices would also deprive Intel of its investment in developing those
19 strategies and give the scores of other companies with which Intel competes an unearned
20 advantage by giving them the benefit of Intel's investments. Public disclosure of Intel's detailed
21 compensation data would also give those other companies an unearned advantage by giving them
22 the benefit of Intel's compensation strategies, compensation levels, and other related
23 information.

24 10. Because these documents cannot be disclosed to the public without causing this
25 harm, their contents should be protected by redacting them and each reference to their contents
26 from public filings.

1 I declare under penalty of perjury that the foregoing is true and correct. Executed
2 in San Francisco, California on July 19, 2013.

3
4
5 /s/ Frank Busch
Frank Busch